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Appl. no. 10/512,002
Atty. ref. 0-010302USWZFN**REMARKS**

Claims 3-9 and 11-18 are pending in this application. Claims 1 and 10 were canceled previously; claim 2 has been canceled in the foregoing amendments, with its limitations now being incorporated into claims 11 and 13.

Additional clarifying amendments have been made to claims 11-13. Certain of these amendments to claim 11 are discussed *infra* (with respect to the written description rejection). The remaining involve the preamble of claim 11 and the replacement of "embossed" with uneven profile. Support for the former is apparent throughout the specification as filed, while the latter finds support at, e.g., the bottom of page 4.

Newly added dependent claim 14 finds support at, e.g., lines 11-13 of page 5 of the specification as filed. Newly added claims 15-18 find support at least as follows:

- 15 - claims 3, 9 and 11,
- 17 - claims 5, 9 and 11, and
- 16 & 18 - claim 12.

Entry of these claims present no undue examination burden because each constituent sub-combination has been searched and examined previously.

As a result of the cancellations and additions, a total of 15 claims are pending. Three of the 15 claims are independent. Both of these numbers are within the 20/3 number included as part of the basic filing and examination fees and, accordingly, no extra claim fees are believed to be due.

Claims 2-9 and 11-14 were rejected in the 6/21 Action. Each outstanding rejection is addressed separately below.

35 U.S.C. § 112, ¶ 2

Claim 5 was rejected under this section as being indefinite. While Applicants continue to believe that this rejection is based on an improper reading of the statutory section in question, claim 5 has been amended in the hopes of expediting prosecution and, possibly, removing potential issues from any necessary appeal.

35 U.S.C. § 112, ¶ 1 (written description)**A. Claims 11 & 13**

Claim 11 and all claims dependent therefrom, were rejected under this section due to inclusion of the phrase "at least one sensing method other than visual inspection and surface profiling." Again, Applicants continue to believe that the statutory section in

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question has been misapplied but have amended claims 11 and 13 in the hopes of expediting prosecution and removing potential issues from any appeal.

B. Claim 12

In a previous action,¹ this claim was rejected due to use of the phrase "said second sheet overlaying and being removably adhered to said sheet." While not specifically mentioned in the 6/21 Action, the cursory and perfunctory language used in the outstanding action lead Applicants to believe that the rejection has been maintained.

Because this particular rejection clearly is improper, Applicants maintain their previous traversal.

Reproduced below are the paragraphs that bridge pages 5-6 and pages 13-14 of the specification:

Pages 5-6

The covering can include a plurality of layers each provides protection against detection by at least one sensing method. One of the layers can be a paint layer applied directly to the object to be protected or to a surface of the covering itself. Suitably, at least one of the layers of such a multilayer covering can be removably adhered to an adjacent layer. Adhesive layers could be provided between each of the layers. This convertibility/removability feature of might be useful in situations where altering the visual appearance of a covering while leaving the other camouflage functions of the covering unchanged is required. For example, a sand-colored upper layer could be removed from a covering at a time when the covering is no longer to be used in a desert environment but is instead to be used in a vegetated area. This can eliminate the need to remove the entire covering, which may still be in good condition after extended use; instead, the outer layer could be peeled off and replaced by a similar outer layer of a different pattern or color to suit the new environment.

¹ A final rejection mailed 15 February 2007.

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Pages 13-14

The inner and outer sheets each can be provided with an adhesive layer on one of their major surfaces. In the case of the inner sheet, this can be used for attaching it to a structure that is to be protected; in the case of the outer sheet, this can be used for attaching it either to such a structure or to an inner sheet that has previously been adhered to the structure. The adhesive layer of the inner sheet could employ a permanent adhesive while the adhesive layer of the outer sheet could employ a releasable adhesive, or the adhesive layer of the inner sheet could be more adherent than that of the outer sheet. These configurations make it easier to apply an inner sheet to a structure and then change its appearance to match a certain environment by removing a previously deployed outer sheet and replacing it with another. A multiplicity of such inner sheets can be used, one on top of another, to provide additional protection.

Because these exemplary sections of the application as filed clearly show possession of the claimed invention, reconsideration and withdrawal of this rejection is respectfully solicited.

Obviousness, 35 U.S.C. § 103(a)

A. Claims 2-5, 7-9 and 11

These claims were rejected as being obvious over U.S. Patent No. 4,953,922 (hereinafter the '922 patent) in view of U.S. Patent No. 4,529,633 (hereinafter the '633 patent). As described above, claim 2 has been canceled; however, with respect to claims 3-5, 7-9 and 11, Applicants respectfully traverse this rejection.

Specifically, Applicants respectfully submit that the '922 and '633 patents cannot be combined in the manner set forth in the 6/21 Action. More specifically, the '922 patent explicitly teaches against doing what would result from the combination posited in the 6/21 Action.

The foil described and claimed in the '922 patent has a very specific structure, and each layer serves a specific purpose and is intended to interact in a particular manner with the other layers. These purposes and interactions are set forth primarily in

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columns 3-4. Without intending to oversimplify the teaching of the '922 patent,² the structure involves (from bottom to top) adhesive layer 8, metallic foil 4, surface coating 5, and plastic layer 6 that includes embossments 7. For ease of reference, Fig. 1 from the '922 patent is reproduced below.

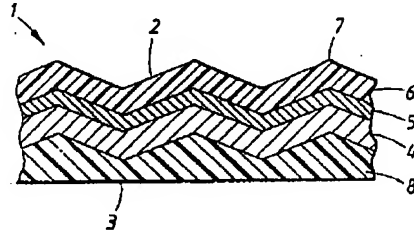


Fig. 1

The 6/21 Action suggests that plastic layer 6 could be provided with "patchy colored images"³ with the motivation being the provision of enhanced camouflage. However, keeping in mind the express purpose of each layer of the foregoing structure, the suggestion of the 6/21 Action would destroy some or all of the structure's utility.⁴

Surface coating 5 is intended to absorb visible and near-IR wavelengths,⁵ a characteristic which naturally requires that such wavelengths actually reach surface coating 5. This fact is made explicit in the paragraph that bridges columns 3-4:

For visible light which strikes an object without causing direct reflections to an observer, a certain irregularity by means of texturing and color variations makes it difficult to discern when it is located in an environment which has surfaces which are similarly irregularly textured and colored These important effects for lessening the risk of discovery by observation are achieved by means of a suitable texturing of the plastic layer 6 in the manner shown in FIG. 2. ... The said color variations can be achieved by varying the thickness of the surface coating layer 5 of the metallic foil. Interference phenomena thereby give rise to different colors, preferably in the green and blue regions. In this way one avoids coloring using pigment, as has previously been common, which can disturb the desired influence on radiation in regions other than visible light.

(Emphasis added.)

Thus, the combination of irregular texture provided in plastic layer 6 combined with a non-uniformly thick coating 5 results in emitted colors. Applying a printed image

² Applicants certainly expect Examiner Ahmad to make his own determination as to the extent of the teaching of this reference and whether this summary appropriately characterizes that teaching.

³ Alleged to be taught by the '633 patent.

⁴ Metallic foil 4 is intended to provide protection against thermal radiation emanating from the object being protected; see, e.g., the table at cols. 5-6 and lines 29-39 of col. 4. While its direct effect might not be affected significantly by the presence of an image on surface 2, other portions of the '922 patent imply that this effect would be negatively impacted by the suggested change; see quoted language in body.

⁵ Col. 3, lines 10-14. This section also states that coating 5 is transparent to thermal IR radiation, which the aforementioned table explains is so that it does not interfere with the intended effect of foil 4.

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to layer 6 would decrease the amount of radiation in the visible and near-IR wavelengths reaching coating 5 and would decrease the amount and/or intensity of colors emitted toward a viewer, both of which would have the effect of reducing the camouflaging effect intended to be produced by that layer. Further, such a printed image would involve pigments, which the '922 patent explicitly teaches "can disturb the desired influence on radiation in regions other than visible light."

Accordingly, the '922 patent explicitly teaches away from the very thing which the 6/21 Action suggests to be an obvious modification. Thus, the teaching of the '633 patent is not properly combinable with that of the '922 patent.

Additionally, the '633 patent does not teach the type of image presently set forth in claim 11. Thus, even if its teaching were properly combinable with the '922 patent, the combination does not teach or suggest all limitations of the claimed invention.

For at least these reasons, this rejection of claim 11 and the noted claims dependent therefrom is improper.

B. Claims 6 and 11

These claims were rejected as being obvious over the '922 patent in view of the '633 patent and further in view of U.S. Pat. No. 6,373,058. Applicants respectfully traverse this rejection.

At present, Applicants are willing to base most of their traversal primarily on the fact that the '922 and '633 patents cannot be combined in the manner suggested in the 6/21 Action without ignoring the explicit teaching of the former and without sacrificing one of the primary camouflaging effects that it actually teaches.

Applicants further note that the 6/21 Action fails to explain how the selected portions of the '058 patent's teaching can be combined with that of the '922 patent; specifically, Applicants submit that the 6/21 Action has failed to indicate which of the layers from the '922 patent would need to be modified, how the modification would be accomplished without destroying the efficacy of the article taught by the '922 patent, etc.

C. Claims 12-13

These claims were rejected as being obvious over the '922 patent in view of the '633 patent.

In addition to the arguments set forth *supra* regarding claim 11, Applicants note that the 6/21 Action fails to explain why claims 12-13 are obvious over the '922 patent in

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view of the '633 patent. Instead, the 6/21 Action includes a conclusory statement: "It would have been obvious ... because it involves a mere duplication of the essential working part...." This statement includes absolutely no explanation as to why the ordinarily skilled artisan actually would endeavor to do so.

As explained in the recent U.S. Supreme Court KSR decision, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed invention does."

While the 6/21 Action alleges that a specific act was within the ordinarily skilled artisan's capability, it provides no reason as to what would have prompted the ordinarily skilled artisan to so act, which leads Applicants to question whether the answer can be anything other than their own disclosure, thereby indicating the improper use of hindsight reconstruction.

Conclusion

Applicants submit that claims 3-9 and 11-13 are neither taught nor suggested by any of the references of record, either alone or in combination. Further, newly presented claims 14-18 include further distinctions over all art of record.

Applicants respectfully request withdrawal of the outstanding rejections and allowance of all claims.

This Response is being filed within the shortened statutory period. No extension of time fee is believed to be necessary. If any fees are or become due, they can be charged to the deposit account mentioned on the first page of this submission.

Inquiries concerning this submission should be directed to the attention of the undersigned. The correspondence address of record remains unchanged.

Respectfully submitted,



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